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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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OFFICE OF SECRETARY

In the Matter of)

Telephone Number Portability)

CC Docket No. 95-116
DA 96-358

**SUPPLEMENTAL COMMENTS OF
MFS COMMUNICATIONS COMPANY, INC.**

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Dated: March 29, 1996

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MFS Communications Company, Inc. ("MFS"), by its undersigned counsel and pursuant to Section 1.415 of the Commission's rules, submits these comments in response to the Commission's request for further comments focusing on the impact of the Telecommunications Act of 1996¹ on the above captioned Notice of Proposed Rulemaking.²

INTRODUCTION

As a competitive provider of local telecommunications services, MFS strongly supports the Commission's efforts to develop rules that promote customer choice and competition in telecommunications markets. Promoting number portability is critical to the development of competition in local telephone markets. The prominence of provisions addressing numbering administration and number portability in the Telecommunications Act highlights the importance of numbering issues to the development of competition.

The Telecommunications Act creates an affirmative statutory duty for all local telephone carriers to implement telephone number portability and requires immediate implementation of

¹ Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).

² *In the Matter of Number Portability*, Notice of Proposed Rulemaking, CC Docket 95-116, RM8535, 10 FCC Rcd 12350 (Released July 13, 1995). ("Notice")

interim number portability. The Act requires that the costs of number portability be recovered from all telecommunications carriers in a competitively neutral manner rather than from any one group of carriers or customers. Finally, the Act gives the Commission exclusive jurisdiction over numbering issues. In order for competition to develop, the Commission must act promptly and order number portability to ensure that state-by-state number portability inquiries do not stymie competition.

I. NUMBER PORTABILITY REQUIREMENTS OF THE TELECOMMUNICATIONS ACT

The Telecommunications Act creates a duty for all local exchange carriers “to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.”³ The Telecommunications Act also specifies the method for recovering the costs of number portability and numbering administration, specifically:

The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.⁴

The Act also gives the Commission exclusive jurisdiction over numbering issues:

The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.⁵

In addition, the Telecommunications Act recognizes the critical importance of number portability and nondiscriminatory access to numbering resources in reducing the market power of incumbent local telephone companies. The Act specifies several numbering and number

³ 47 U.S.C. §251(b)(2).

⁴ 47 U.S.C. §251(e)(2). [emphasis added]

⁵ 47 U.S.C. §251(e)(1). [emphasis added]

portability prerequisites for Bell Operating Company ("BOC") provision of interLATA long distance service. Specifically, the Act orders the BOCs to provide "interim number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible."⁶

Several aspects of the number portability provisions of the Telecommunications Act are important. First, Section 251(b)(2) imposes a duty of number portability to the extent that it is "technically feasible." As the Commission discussed in its Notice, number portability is obviously feasible since there are several proposals to implement full number portability⁷ and at least three different call processing solutions for routing telephone calls in a number portability environment, all involving some sort telephone number database query.⁸ Clearly, the emerging standard for number portability is Location Routing Number ("LRN") as pioneered by the efforts in a number of states, including Illinois, Georgia, Maryland and New York.⁹

Second, the Telecommunications Act distinguishes between interim number portability (and orders the BOCs to implement such interim measures) and permanent number portability. Since permanent number portability is technically feasible, the Commission should move forward with rules to establish both full and interim number portability. Of course, the

⁶ 47 U.S.C. §271(c)(2)(B). [emphasis added]

⁷ Notice at ¶¶ 36-42.

⁸ Notice at ¶¶ 43-47. The Commission described three scenarios. The Terminating Access Provider ("TAP") scenario placed the burden of doing the database query for call routing on the terminating access provider. The Originating Access Provider ("OAP") scenario placed the burden of doing the database query on the originating access provider. The N-1 scenario placed the burden of doing the database query on the carrier immediately prior to the terminating service provider. For local calls, under the N-1 scenario, the originating carrier would query the database. For interLATA calls, the interexchange carrier would query the database.

⁹ LRN technology involves a 10 digit routing number that identifies the end office that serves a customer in addition to a 10 digit telephone number. Thus, when a customer changes service providers she keeps her 10 digit telephone number but changes her 10 digit routing number. The New York Commission recently released a report concluding that LRN is the emerging standard for number portability. *Re: Provision of Universal Service*, Case 94-C-0095 (Released Jan. 4, 1996). The study was performed by the Number Portability Trial Steering Committee and is reproduced in the Commission's order as Attachment A. Similarly, the Georgia Commission ordered LRN for number portability. *Local Telephone Number Portability Under Section 2 of the Telecommunications Competition and Development Act of 1995*, Order, Docket 5840-U (Feb. 20, 1996).

Commission should recognize that it will take some time to implement permanent number portability. To promote competition until permanent number portability is implemented, it is critical that the Commission order that interim number portability be immediately provided by incumbent local exchange carriers.

Third, Section 251(b)(2) of the Telecommunications Act requires that the costs of number portability be recovered in a competitively neutral manner. As the Commission develops cost recovery mechanisms for number portability, it must develop competitively neutral cost recovery mechanisms. Fourth, the Act establishes the Commission as having exclusive jurisdiction over numbering issues and allows the Commission to delegate its authority to an independent entity or state commissions. Thus, the Act envisions the Commission taking a lead role in the development of numbering and number portability policies.

II. HOW SHOULD THE COSTS OF NUMBER PORTABILITY BE RECOVERED?

A. Costs Recovered from Telecommunications Carriers Should Include Only the Common or Shared Costs of Number Portability

The Telecommunications Act requires that the costs of “number portability shall be borne by all telecommunications carriers on a competitively neutral basis.” There are two types of costs associated with number portability: (1) the common or shared costs incurred to establish, maintain and administer the common or shared number portability database and associated general facilities and procedures; and, (2) the costs which each individual carrier must incur to conform its own network, its own operating, signaling and routing procedures, and its own operational and administrative support systems. Competitive neutrality requires that only the common or shared costs be recovered from all telecommunications carriers. An individual carrier's network costs, however, should not be included in the costs of number

portability to be recovered from other carriers. Just as every carrier today must face the costs of conforming its network to the North American Numbering Plan, or any other industry-wide numbering initiatives or standards, it is entirely appropriate that carriers bear their own network costs associated with number portability.

It would be inappropriate to include the costs incurred by incumbent local telephone companies to upgrade their individual networks to accommodate number portability in the recoverable industry-wide, shared costs of number portability. Allowing firms to recover any and all cost changes is a legacy of a regulated monopoly environment; guaranteed cost recovery or "make whole" mechanisms are inappropriate policies in the competitive environment envisioned by the Telecommunications Act. A firm's individual network upgrades should be the responsibility of the individual carrier and should not be paid for by the firm's competitors. For example, in the auto industry, when air bags were mandated by Federal law, Ford, GM and all auto manufacturers were required to change their production lines to accommodate the new requirement. Ford could not require that Toyota pay a charge designed to cover Ford's costs of upgrading its production line.

B. Shared Number Portability Costs Should be Apportioned Among Providers Based on Net Revenues

The Telecommunications Act is unambiguous in requiring that the costs of number portability shall be spread among all telecommunications carriers and not a single class of carriers (e.g., local telephone carriers), a segment of the market (e.g., only carriers whose customers use number portability), or some carriers' customers. Thus, for example, mechanisms that would recover costs of number portability exclusively from carriers that use number portability, such as a per month or per call charge, would not comply with the

requirements of the Telecommunications Act since those carriers are not all carriers. Similarly, recovering number portability costs through a per line charge is inappropriate since apportionment based on line counts fall disproportionately on local telephone carriers and not on all telecommunications carriers as required by the plain language of the Act.

Incumbent local telephone companies might argue that number portability does not benefit them, but allows new entrants to take "their" customers. Therefore, they argue, they should not be required to pay for the costs of number portability. That argument, however, is mooted by the language of the Telecommunications Act -- the Act requires all local telephone carriers to implement number portability and that all carriers bear the burden of number portability costs. Similarly, the Commission has rejected such logic in other contexts. In the long distance market, it required that all long distance carriers pay an Equal Access and Network Reconfiguration charge, including AT&T, even though equal access conversations arguably did not benefit AT&T and only permits competitors to take AT&T's customers.

The most equitable, competitively neutral mechanism for recovering the costs of number portability is a charge based on telecommunications carriers' service revenues net of payments to intermediaries. For example, a local telephone carrier's assessment would be its total telecommunications service revenues less the interconnection charges, compensation charges, and charges for unbundled network elements that it pays. Similarly, a long distance firm's share of number portability costs would consist of its revenues net of the access charges it pays and net of any charges it pays for long distance services it purchases and resells. The above described mechanism is competitively neutral because it is borne by all carriers based on their net revenues earned from sales to end user customers.

Of course, to ensure competitive neutrality, a carrier cannot be allowed to recover its share of common, shared number portability costs by passing those costs through to other

telecommunications firms. For example, it would be inappropriate for an incumbent local exchange carrier to pass through its share of number portability costs by raising its access charges or allocating its number portability costs to its access or interconnection services.

C. Carriers Should Not Recover their Individual Number Portability Costs from Services Sold to Other Telecommunications Carriers

When number portability is implemented, every carrier will face its own network costs and its portion of the shared or common number portability costs. It would be contrary to the Telecommunications Act's requirements of competitive neutrality if those costs could be recovered from competitors. For example, it would obviously not be competitively neutral if incumbent local telephone companies simply inflated the interconnection charges or access charges paid by their competitors to recoup the incumbent's individual number portability costs.

Carriers should have broad latitude for recovering their individual number portability costs and a carrier's costs of number portability should be recognized as an exogenous cost for purposes of adjusting price caps. However, to enforce the Telecommunications Act's requirements of competitive neutrality, the Commission should prohibit carriers from recovering number portability costs from access charges, compensation charges, interconnection charges, residual interconnection charges or any service sold exclusively to telecommunications resellers. Said differently, a carrier should look to services sold to end-users and not to services sold to competitors for recovery of its number portability costs.

D. Interim Number Portability Provisions Should be Immediately Implemented but Should not Delay Permanent Number Portability

The Telecommunication Act distinguishes between interim number portability and permanent numbering portability. In the provisions dealing with the BOCs' entry into interLATA

long distance markets, technologies like remote call forwarding and direct inward dialing trunks are considered interim number portability. In developing rules for number portability, however, the Commission should not consider remote call forwarding or direct inward dialing trunks to be more than interim technologies. It should aggressively pursue a permanent database form of number portability.

Implementing permanent number portability, however, will take some time, so it is critical that the Commission require that incumbent local exchange carriers immediately provide interim number portability. In requiring that the costs of number portability be borne by all telecommunications providers, the Telecommunications Act does not distinguish between permanent and interim number portability. Thus, the Act requires that the same funding mechanism apply to interim and permanent number portability. If interim number portability was priced on a per call, per minute or per line basis pursuant to the common tariffed charges for remote call forwarding or direct inward dialed trunks, those number portability charges would be borne by only competitive local exchange carriers in violation of the Act's requirements that the costs of number portability be borne by all telecommunications carriers. In addition, interim number portability should be recognized as an inferior, stopgap number portability solution. Because interim number portability degrades the service of new entrants, as a matter of policy, and to provide incentives for incumbent local exchange carriers to implement permanent number portability, interim number portability should be provided at no cost to the new entrant.

III. THE COMMISSION SHOULD TAKE A LEAD ROLE IN NUMBER PORTABILITY

The Telecommunications Act plainly gives the Commission exclusive jurisdiction over numbering and number portability issues and allows the Commission to delegate authority to

independent entities or state commissions. Several state commissions are wrestling with both interim and permanent number portability issues and policies. While states have provided an important forum where number portability issues are debated and number portability architectures are tested, the Telecommunications Act requires that the Commission take a lead role in developing a national uniform number portability policy. Competition will be hindered if implementation of number portability occurs on a state-by-state basis.

Market entry by new competitors who need number portability to compete effectively in the market will be severely retarded if new entrants have to litigate (and win) number portability cases against entrenched incumbent providers in all fifty states, the District of Columbia, and Puerto Rico. In developing national number portability policies, and in order to prevent anticompetitive delays stemming from state-by-state debates of number portability, the Commission should order states to promptly implement a form of full number portability that conforms with certain basic criteria and to immediately require incumbent local exchange carriers to offer interim number portability.

IV. CONCLUSIONS

The Telecommunications Act requires that the costs of number portability be borne by all telecommunications carriers on a competitively neutral basis, and establishes the Commission's lead role in developing national number portability policies. In these supplemental comments, MFS recommends that the Commission allow only the common or shared costs of number portability be recovered from telecommunications carriers and that such recovery be apportioned among carriers based on their revenues net of sales to and purchased from intermediaries. MFS also recommends that the Commission take a lead role in

establishing the nation's number portability policy by ordering state commissions to implement full number portability.

Respectfully submitted,



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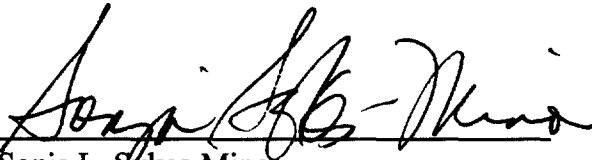
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I hereby certify on this 29th day of March 1996, copies of the foregoing
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